IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 24 of 1985

ANANDILAL
V/S
SMT. PANNADEVI'S LR'S

Mr. M. SHISHODIA, & Mr. MOHD. ASHLAM for the appellant/petitioner

Date of Order : 22.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed by the defendant against the judgment & decree passed by the learned lower Appellate Court, whereby by reversing the judgment & decree of the learned trial court, the plaintiff's suit for eviction has been decreed.

The facts of the case are, that the plaintiff respondent (Bhuri Devi) filed a suit for eviction against the appellant, alleging interalia, that he is a tenant in the suit shop at a monthly rent of Rs. 7/-, and that he has not paid rent for the last three years despite repeated demands, and that the plaintiff requires the premises reasonably and bonafide. It was alleged that as the plaintiff is issue-less, and there is nobody to maintain her, therefore, she would sell the shop, and from the

proceeds she would make her livelihood, and that she cannot sell the shop unless it is in vacant possession of the plaintiff. Then, pleading about comparative hardship has been taken. It was alleged that the tenancy was determined by the notice given under Section 106 of the Transfer of Property Act, which was sent on 28.4.1977, and was received by the defendant on 30.3.1977, but to no good. Interalia with these averments the suit for eviction, and arrears of rent, has been filed. The defendant contested the suit by filing written statement, contending that the defendant had never been tenant of the plaintiff, in the property, and that there is no relationship of landlord and tenant between the parties, obviously, therefore, the defendant is not a defaulter. Then it was pleaded, that the plaintiff had died, and Satya Narain also expired, and the legal representative plaintiff is the wife of Satya Narain. However, it was pleaded, that Satya Narain was never adopted by the plaintiff, nor Smt. Panna is heir of Smt. Bhuri. It was also contended, that the husband of the plaintiff being Shiv Bhagwan also never adopted anybody. In additional pleas it was pleaded, that the plaintiff earlier also got served the notice on the defendant, and his brother, and mother. Thus, the plaintiff is in habit of serving notice. It was pleaded, that he is the owner of the shop and is continuing in his possession from the time of his deceased father Gauri Dutt, who died ten years ago, and the defendant is carrying on the business in the shop for

the last about 20 years, and it is wrong that the shop is in possession of the defendant as tenant, and that he is maintaining the shop. Thus, it was contended that the suit be dismissed.

The learned trial court framed 6 issues. Issue No.1 was about the existence of relationship of the landlord and the tenant. Issue No.2 was about default, while issue No.3 was about the plaintiff's entitlement to get the vacant possession, and issue No.4 was about rent. Issue No.4-A was about Satyanarayan being adopted son of the plaintiff, while issue No.5 was regarding relief.

After completing trial, the learned trial Court dismissed the suit, vide judgment and decree dated 24.9.81. Deciding issue No.1, it was held by the learned trial Court, that earlier in the notice, the plaintiff has alleged the shop to have let out to the defendant on a monthly rent of Rs.31/-, while she has come with a story of the shop having been let at a monthly rent of Rs.7/-, and no document about tenancy has been produced. Then the witness Radheshyam has stated, that he alongwith Jhabarmal had gone to the defendant, and received the rent. In cross-examination he has deposed, that he had gone to Gauridutt for receiving the rent some 6-7 years ago, while Gauridutt is deposed to have died much earlier. Thus, the witness is not reliable. Then there are contradictions about receipt

of rent by Jhabarmal and it being given to Bhuri, while the defendant denies to have paid any rent. Then, there is contradiction in the evidence of the plaintiff, as to whether the shop was let out to Gauri Dutt, or to the defendant. Then, it has been noticed, that according to the defendant the shop was given to his father in gift, for which a document was executed later on by the plaintiff, in the name of the defendant, which gift deed has been produced as Ex.A-1, which has not been admitted in evidence for the purpose of proving the title, but for collateral purpose, and thus it was found, that it is not established that the defendant is in possession as a tenant. Thus issue no. 1 was decided against the plaintiff. Mainly on this finding, other issues were also decided against the plaintiff, and the suit was dismissed.

In appeal the learned lower Appellate Court reversed the finding on issue no.1. It was interalia found by the learned lower Appellate Court, that the defendant has admitted in his evidence, about not being aware as to whether the shop was gifted to his father initially, or was let out, and was subsequently gifted. Then, it was found, that it is admitted, that upto 1.4.1971 the defendant continued to be tenant, and thereafter on 1.4.1971 the Gift Deed Ex. A-1 was executed. Then, it was considered that Ex. A-1 not being registered, and there could be no oral gift, the document could not be looked into, and from the

evidence produced by the plaintiff, it is clear, that the defendant was in possession as a tenant. It was also considered, that D.W.5 is the real brother of the defendant, who also had pleaded ignorance about the gift, while if the shop had been gifted, this witness also would have half share in the property. Likewise, D.W. 6 has also admitted that the shop belonged to Bhuri, and she was the owner till she was alive. Then, regarding Ex.A-1 it was held, that the defendant did not even refer to any gift in the written statement, rather all that was pleaded was, that the shop is in his possession for the last 20 years, and he is the owner. The document Ex.A-1 being insufficiently stamped, and unregistered, is not admissible in evidence, and cannot be looked into even for the purpose of acknowledgement, contained therein, as that would be violative of the provisions of the Registration Act. Then, it was found, that admittedly, i.e. as admitted by the defendant, while in the witness box, that the gift deed was with him at the time of filing of written statement, and was showed by him to the advocate, and that the document continued to be with him. Notwithstanding this, it has not been produced along with the written statement, and it was found, that it could not be produced subsequently. Then, regarding adverse possession, it was found, that the defendant has pleaded ignorance about father being tenant, and has not claimed to be in adverse possession, as a trespasser. In that view of the matter, the defendant's

adverse possession is also not established, and he is liable to eviction, and interalia mainly on this finding the suit has been decreed.

The appeal was admitted on 5.8.1985 by framing the following substantial questions of law:-

> (1) Whether the lower appellate Court was right in rejecting the gift deed Ex.A-1 and in not taking it into consideration even for collateral purpose for showing the appellant's possession over the property in dispute and for showing the admission of the donor?
>
> (2) Whether the lower appellate Court was correct in reversing the finding of the trial court on the question of relationship of landlord and tenant between the parties and in doing so whether the lower appellate Court misread the evidence?

I have heard learned counsel for the appellant on both these questions.

Coming to the first question, about admissibility of Ex. A-1, and for collateral purpose, including showing possession of the appellant, and for seeing the admission of the defendant. Admittedly the document Ex.A-1 is unregistered document, and it purports to be Gift Deed, gifting the property worth more than Rs.100/-, inasmuch as even in this document itself the value of the shop has been shown to be Rs. 2000/-, while according to the provisions of Section 123 of the Transfer of Property Act, gift with respect to immovable property worth more then one hundred

rupees can only be effected by a registered instrument, in accordance with the provisions of Section 123. It is only in the case of movable property that the gift can be made by delivery of possession also. Thus, this document Ex. A-1 on the face of the provisions of Section 123 of the Transfer of Property Act, read with Section 17 and 49 of the Registration Act, can neither be admitted in evidence, nor can it create any gift in favour of the defendant. Regarding consideration of admission of the donor, contained therein also, in my view, on the face of language of Section 123 of the Transfer of Property Act, since there could be no oral gift, and since admittedly there is no document of gift, said to have been made by the plaintiff's husband, in favour of the father of the defendant, the mere recital in Ex.A-1, or even if it be acknowledgement by the plaintiff in Ex.A-1, that cannot be looked into in evidence, as an evidence of gift in favour of defendant, or his father. As against this, a look at the evidence shows that defendant himself has admitted, that he does not know as to whether the shop was gifted to his father by Shiv Bhagwan at the inception or was initially let out, and then was gifted. Then, according to him, his father expired in Samvat 2024. Thus, even according to the defendant his father was inducted in the possession of the shop. In that view of the matter, since Ex.A-1 is not admissible in evidence, and since it is not established, that the defendant is in adverse possession of the shop for the

requisite period of time, the only question to be seen is as to whether the relationship of landlord and tenant is established or not. Regarding adverse possession in the entire evidence, all that has been attempted to establish is, that the defendant, or his father were in possession of the shop, and nothing has been deposed about being in adverse possession, except relying upon Ex.A-1 which, as found above is not admissible in evidence.

Now, coming to the question of existence of relationship of landlord and tenant, the evidence led on the side of the plaintiff does clearly establish this fact, inasmuch as P.W.1 Bhuri has clearly deposed that the shop was let out to Gauri Dutt at a monthly rent of Rs. 7/-, and Gauri Dutt and Anandilal were paying rent to her. However, no rent has been paid for the last five years. In cross-examination she has denied the suggestion about the shop not being on rent with Gauri Dutt, and has also denied the shop having been gifted by her husband to the defendant's father. She has of course admitted to have got served earlier notice. Then, P.W.3 has deposed the facts about the defendant having admitted to be going to the plaintiff, and settling the account of rent, and on this aspect the only cross examination is about the period of time as to when this occurred. Then, Jabarmal P.W.5 has deposed to have received rent from the defendant some 5 years ago, and he has deposed that he has delivered key of the almirah to

Gauri Dutt after 1- 1 ½ months of letting it out. In cross examination he did not shake on the aspect of having received the rent from Anandilal. Then, Gordhan has deposed that Bhuri used to often tell him that Anandilal is neither vacating the shop nor is paying the rent. Similar is the evidence of P.W.9. In my view, interalia from this evidence it is established, that the defendant is in possession of the premises as a tenant, and more so in view of the fact, that the plaintiff's title is not in dispute, rather D.W. 6 has admitted that the shop belonged to Bhuri, and she was the owner till she was alive. In that background the defendant claims to be in adverse possession, Gift Deed is not admissible in evidence, and no gift comes into existence, and as admitted by the defendant that he does not know as to whether his father was initially gifted the shop, or was initially inducted as tenant, and was subsequently gifted. This coupled with the evidence of the plaintiff, does clearly establish, that there was relationship of landlord and tenant between the parties, and it does not come to an end by any gift deed, having been executed. Thus, mere factum of appellant's possession in shop by itself is of no consequence, rather it is established to be as tenant. Consequently the substantial question no. 1 is required to be answered against the appellant, and is accordingly answered.

Regarding question no.2, having gone through the

findings of the two learned courts below, and having gone through the entire evidence, including the part of the evidence as discussed above, in my view, there is no misreading of the evidence on the part of the learned lower Appellate Court, nor any such misreading has been pointed out. Consequently, the question no. 2 is also required to be answered against the appellant, and is accordingly answered.

The appeal thus has no force, and is dismissed summarily. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/